

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Richard J. Klein,
Petitioner

vs.

Case No. 1:01cv794
(Beckwith, J.; Black, M.J.)

Harold Carter,
Respondent

ORDER

Petitioner, an inmate in state custody at the Ross Correctional Institution in Chillicothe, Ohio, has filed this pro se action for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter is before the Court on petitioner's two motions for an extension of time to file his traverse (Docs. 41, 44), petitioner's motion to amend the petition (Doc. 43) and respondent's opposition (Doc. 45).

Petitioner asserts that in responding to his petition, respondent provided information from the state record that petitioner lacked when he prepared his petition. (Doc. 43). He requests that he be permitted to amend the petition to make it more factually accurate based on the new information he received, assuring the Court that the petition will remain "functionally in the same form as previously presented." (*Id.*). Respondent objects to the amendment because multiple amendments waste the Court's and respondent's time and resources. (Doc. 45). In this case, petitioner has filed three amended petitions, and respondent has answered the third petition.

Under circumstances such as these where respondent has already answered the petition, Rule 15 of the Federal Rules of Civil Procedure allows amendment of the petition by leave of the court "which shall be freely given when justice requires." Since it is in the interests of a fair and accurate determination of petitioner's action challenging his conviction for this Court to have a correct version of the facts underlying the petition, IT IS HEREBY ORDERED that petitioner's motion to amend

his petition (Doc. 43) be GRANTED. Petitioner shall have twenty days from the date of this Order to amend his petition, and such amendment shall be limited to the correction of any factual inaccuracies in the petition.

Respondent shall have twenty (20) days from the date the amended petition is filed to submit an amended return of writ.

Because petitioner intends to file an amended petition, his motions for an extension of time to file a traverse to the return of writ are premature. Petitioner may file a traverse once respondent submits an amended return of writ. Accordingly, petitioner's motions for an extension of time to file a traverse (Docs. 41, 44) are hereby DENIED.

Date: June 21, 2004
Hr

S/ Timothy S. Black
Timothy S. Black
United States Magistrate Judge